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CONCORD, N.H.

1952

April 3

Mr. William H. Riley, Commissioner  
Department of Labor  
Concord, New Hampshire

Dear Sir:

This will acknowledge receipt of your letter of March 17, 1952 relative to the application of the Workmen's Compensation Law to persons engaged in fighting forest fires.

Under the provisions of chapter 233, section 15, Revised Laws (1942), the state forester may appoint town forest fire wardens and deputies. They are paid such remuneration as may be fixed by the state forester and forestry commission, section 22. Further, these district chiefs, as direct representatives of the state, are required to direct and control the town wardens in the performance of their duties, section 13. Finally, under section 20, wardens and deputies may call such further assistance as is deemed necessary in fighting fires.

The status of such persons as far as Workmen's Compensation is concerned, seems to be as employees of the state. They are under the control of and subject to the direction of the state forester through his agents, the district chiefs. Even though part of their remuneration comes from the towns, the state retains complete control over these men during any period of work. Therefore, their only chance to recover for injuries sustained while working in their capacities as wardens, deputies, etc., is to petition the Governor and Council under chapter 266, section 4, Laws 1947.

One exception to this may be made in the case of regularly employed town firemen. If they are called out by any of the state agents to assist in fighting fires it would seem that their general employer would still be the town or city while the state here would be a special employer. The liability would remain with the general employer as long as he continues to direct and control such a worker. In Bisson v. Winnepesaukee Air Service, 91 N.H. 73, as quoted in West's New Hampshire Digest, Workmen's Compensation, section 208:



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-2-

"The test of whether a master and servant relation exists between workmen of a general employer and a person to whom the workman is hired out for a particular service, is whether the person to whom workman is hired out has the right to control workmen and direct details of his work."

It therefore depends somewhat upon the facts of any one situation, whether or not regularly employed firemen of a town (that has accepted the provisions of the act) may recover under the act.

If I may be of any further service please feel free to call on me at any time.

Very truly yours,

Arthur E. Bean, Jr.  
Law Assistant

AEB, Jr/T